TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927

No. 274

SULTAN RAILWAY & TIMBER COMPANY,
PLAINTIFF IN ERROR,

vs.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON AND CLAIRE BOWMAN, AS DIRECTOR OF LABOR AND INDUSTRIES

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED MAY 31, 1927

(32,726)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 10, 1927.

[fol. 1] **IN SUPERIOR COURT OF THURSTON COUNTY**

No. 10864

SULTAN RAILWAY & TIMBER COMPANY, a Corporation, Plaintiff,

vs.

DEPARTMENT OF LABOR & INDUSTRIES OF THE STATE OF WASHINGTON, and Claire Bowman, as Director of Labor & Industries of the State of Washington, Defendants.

AMENDED COMPLAINT—Filed June 25, 1926

For cause of action against defendants, plaintiff alleges:

I

That plaintiff is now and at all times hereinafter mentioned was a corporation organized and existing under and by virtue of the laws of the State of Washington, with its principal place of business located in the City of Everett, Snohomish County, State of Washington. That plaintiff has paid to the State of Washington all its annual license fees.

II

That plaintiff brings this, its bill of complaint, in its own behalf, and in behalf of all other persons, firms and corporations, similarly situated, of which there are a large number operating in the State of Washington.

III

That for a number of years last past plaintiff has been and now is the owner of a large body of timber in the State of Washington, and cutting said timber and selling the logs therefrom. That during said time it has been engaged in [fol. 2] dumping such logs so produced in the Snohomish River, which at all of said times was and now is a navigable body of water of the United States, flowing through Sноho-

mish County, into the waters of Puget Sound, and at all times hereinafter mentioned said Snohomish River was a body of navigable water upon and over which, with its connections, commerce by water was, and now is being carried on between points in the State of Washington and other points of the United States, and foreign countries. That such logs have been and now are so dumped into the waters of Snohomish River for the purpose of booming, sorting and rafting the same while so located in the said Snohomish River, preparatory to causing the same to be towed over the waters of such Snohomish River and other navigable waters of the United States to the mills of the purchasers thereof, that for the purpose of booming and rafting such logs, while so located in the waters of said Snohomish River, plaintiff hires and for a number of years last past has hired employees whose duties continually require them to be upon such logs and on the navigable waters of said Snohomish River for the purpose of making such logs into rafts preparatory to causing them to be towed over such navigable waters of the United States to the purchasers thereof. That said rafts or booms of logs are made up by using a number of logs which are permanently chained together and permanently used for holding the logs together, and that the men in working upon these booms frequently use and are required to use these permanent boom sticks to stand on.

IV

That the Department of Labor & Industries of the State of Washington, acting through the defendant, Claire Bowman, as Director of the Department of Labor & Industries, [fol. 3] has made and promulgated a rule and order that such men while in the employ of the plaintiff, and while working upon the waters of the Snohomish River, as aforesaid, and all other employers similarly situated, will be required to include the wages paid to such employees within the payroll which they are required to report to the Director of Labor & Industry, and to pay premiums — the whole of such payroll so formed and reported, and the Director of Labor & Industries has demanded that plaintiff so include such men in the payroll to be reported by it and to pay premiums upon the whole of such payroll so formed, acting and claiming to act under and by virtue of the pro-

visions of the Workmen's Compensation Act of the State of Washington.

V

That said rule and order so promulgated, and said demand so made as aforesaid, is in violation of and contrary to the terms of the Workmen's Compensation Act of the State of Washington, and is in violation of Article III, Section 2 of the Constitution of the United States extending the judicial power of the United States to all cases of admiralty and maritime jurisdiction, and of Article I Section 8 of the Constitution of the United States giving Congress power to make all laws necessary and proper to carry into execution the powers vested in the Government of the United States, and is in violation of Sections 24 and 256 of the Judicial Code of the United States, giving the Federal District Courts the exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, and plaintiff hereby invokes said provisions of the Constitution of the United States, and said sections of the Judicial Code of the United States, and alleges that said rule and order, [fol. 4] and said demand, cannot be enforced against this plaintiff consistent therewith.

VI

That if the plaintiff does not comply with said order and rule so promulgated as aforesaid, and if it does not include such men so working upon the navigable waters of the Snohomish River as aforesaid in the payroll which it will report to the Department of Labor & Industries, and to the Director thereof, and if it does not pay premiums upon the payroll so formed, the Director of Labor & Industries will invoke all of the penalties of the Workmen's Compensation Act against the plaintiff, and will in so far as power is given to him prevent this plaintiff from carrying on its business as aforesaid; that there are many other employers of labor in the State of Washington, similarly situated in all respects as is the plaintiff, against whom the same rule and the same remedies and penalties will be enforced by the Director of Labor & Industries; and a multiplicity of suits will be begun and carried on thereby. That the plain-

[fol. 7] In the Superior Court of the State of Washington for Thurston County

No. 10864

Olympic Railway & Power Company, a Corporation, Plaintiff,

vs.

Department of Labor and Industries of the State of Washington and Claire Boucher, as Director of Labor and Industries of the State of Washington, Defendants

Demurrer to Amended Complaint

Come now the defendants herein, and demur to the amended complaint of the plaintiff herein on the following grounds:

I

That the amended complaint does not state facts sufficient to constitute a cause of action.

John H. Dunbar, Attorney General; M. H. Wight, Assistant Attorney General, Attorneys for Defendants.

Filed in Superior Court Thurston Co., Wash., Jun. 25, 1926. Alice Schomber, Dep. Clerk.

[fol. 8] In Superior Court of Thurston County

[Title omitted]

Order Sustaining Demurrer and Judgment. Filed July 6, 1926

This matter having come on regularly for hearing on the 25th day of June, 1926, before Honorable John M. Wilson, one of the judges of the above named court upon the demurrer of the defendant, the plaintiff being represented by Guie & Halverstadt, and the defendant being represented by M. H. Wight, assistant attorney general of the State of

Washington, and the court having listened to the arguments of counsel and having thereafter taken the matter under advisement and having thereafter prepared and filed a written memorandum opinion, and being fully advised in the premises both as to the law and facts, it is hereby

Ordered that the demurrer be and the same is hereby sustained.

The plaintiff having elected to stand on its complaint, and having refused to plead further, it is further

Ordered, adjudged and decreed that the above entitled action be and the same is hereby dismissed with costs in favor of the defendant.

[fols. 9-22] The plaintiff excepts to the order sustaining the demurrer and to the judgment, which exceptions are hereby allowed.

Done in open court this 6th day of July, 1926.

John M. Wilson, Judge.

The foregoing order and judgment is hereby O. K.'d as to form and plaintiff hereby waives any notice of the presentation for signing and entry, and the signing and entry, of said judgment, and hereby admits that it elects to stand on its amended complaint herein, and refuses to plead further.

Dated this 2nd day of July, 1926.

D. V. Halverstadt, Jno. J. O'Brien, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 23] In Supreme Court of Washington, Department One

No. 20214

Eclipse Mill Company, a Corporation, Appellant,

v.

Department of Labor & Industries of the State of Washington and Claire Bowman, as Director of Labor and Industries of the State of Washington, Respondents

No. 20215

Sultan Railway & Timber Company, a Corporation, Appellant,

v.

Department of Labor & Industries of the State of Washington and Claire Bowman, as Director of Labor and Industries of the State of Washington, Respondents

Opinion—Filed December 3, 1926

These are separate appeals, consolidated by an order of this court for the purpose of hearing. Each of the appellants employs workmen who work in extra hazardous occupations as that term is defined in the state workmen's compensation act. Certain of these workmen the appellants did not list on their payrolls furnished the department of labor and industries, whose duty it is to enforce the provisions of the act mentioned. The department ordered them so to do, and threatened them with the penalties of the act in the case they refused to comply with the order. Actions were then begun by each of the appellants separately in the superior court of Thurston county, seeking to enjoin the department from enforcing the order. To [fol. 24] the complaints of the appellants, general demurrers were interposed which the trial court sustained. The appeals are from judgments of dismissal entered after the appellants had elected to stand on their complaints.

There is no contention that the occupations in which the workmen were engaged are not extra hazardous; the con-

troversy is over the question whether the occupations are within the provisions of the workmen's compensation act.

As the causes were determined in the court below on general demurrers, the facts must be gathered from the allegations of the complaint. With reference to the character of the work in which the workmen of the appellant, Sultan Railway & Timber Company, were engaged, the pertinent allegations are as follows:

"III. That for a number of years last past plaintiff has been and now is the owner of a large body of timber in the state of Washington, and cutting said timber and selling the logs therefrom. That during said time it has been engaged in dumping such logs so produced in the Snohomish River, which at all of said times, was and now is a navigable body of water of the United States, flowing through Snohomish County, into the waters of Puget Sound, and at all times hereinafter mentioned said Snohomish River was a body of navigable water upon and over which, with its connections, commerce by water was, and now is, being carried on between points in the state of Washington and other points of the United States, and foreign countries. That such logs have been and now are so dumped into the waters of Snohomish River for the purpose of booming, sorting, and rafting the same while so located in the said Snohomish River, preparatory to causing the same to be towed over the waters of such Snohomish River and other navigable waters of the United States to the mills of the purchasers thereof, that for the purpose of booming and rafting such logs, while so located in the waters of said Snohomish River, plaintiff hires and for a number of years last past has hired employees whose duties continually require them to be upon such logs and on the navigable waters of said Snohomish River for the purpose of making such logs into rafts preparatory to causing them to be towed over such navigable waters of the United States to the purchasers thereof. That said rafts or booms of logs are made up by using a number of logs which are permanently chained together and permanently used for holding the logs together, and that the men in working upon these booms frequently use and are required to use these permanent boom sticks to stand on."

With reference to the character of the work in which the workmen of the appellant, Eclipse Mill Company, were [fol. 25] engaged, the allegations are as follows:

"III. That the business of the plaintiff corporation is now, and continuously for a number of years last past has been operating a sawmill for the manufacture of logs into lumber, which mill is located on the Snohomish River, a navigable body of water of the United States, flowing through Snohomish County into the waters of Puget Sound; and at all times hereinafter mentioned said Snohomish River was a body of navigable water upon and over which, with its connections, commerce by water was, and now is, being carried on between points in the State of Washington and other points of the United States, and foreign countries.

"IV. That the logs which are cut into lumber at plaintiff's said mill are towed thereto in booms, upon the waters of said Snohomish River, which booms are anchored at said mill while in the navigable waters of said Snohomish River; and logs from such booms are moved therefrom to said mill for cutting, by means of a conveyor operated by a spike endless chain, operating throughout the length of said conveyor. That the lower end of said conveyor extends into the navigable waters of said Snohomish River. That to transfer logs from said booms to said conveyor, plaintiff hires and for a number of years last past has hired employees, called boom men, whose duties continuously require them to be upon such rafts of logs while on the navigable waters of the Snohomish River for the purpose of breaking up such rafts, and also employees, called slip men, whose duties likewise continuously require and have required them to be upon such navigable waters of the Snohomish River, for the purpose of guiding such logs from such rafts to the said conveyor. That said rafts or booms of logs are made up by using a number of logs which are permanently chained together, and that the men in working upon these booms frequently use and are required to use these permanent boom sticks to stand on."

From these allegations it will be seen that, while the workmen of each of the appellants work upon navigable waters, they do not actually engage in the work of navigation; that is to say, neither set of workmen transports the

logs from one place on such navigable waters to another. The work of the first set is to prepare the logs for transportation; their work ends at the point where actual transportation begins. The work of the second set begins at the point where transportation ends; their work is to break up the rafts after the rafts have reached their destination, and float the logs singly or in groups to the reach of the conveyor by means of which the logs are taken from the navigable waters into appellant's mill.

Turning to our workmen's compensation act, it is at once [fol. 26] plain that the legislature intended it to apply to all cases of employment, where the work is extra hazardous, which are within the legislative jurisdiction of the state. The act expressly so declares, and among the employments especially enumerated in the act as coming within its provisions are "logging" and "lumbering." The work in which these workmen are engaged manifestly falls within these terms as they are commonly and generally understood. It must follow, therefore, that if the work is within the legislative jurisdiction of the State the workmen are within the terms of the act, and their employers are bound to contribute to the fund from which injuries occurring to the workmen in the prosecution of the work are compensated. But it is equally plain that if the work is not within the legislative jurisdiction of the state, the act is without application, and their employers are not bound to so contribute. The state legislature cannot "impose upon an employer any obligation to contribute to a fund to pay awards under the workmen's compensation law, unless it affords protection to the employer as against claims of workmen or their dependents payable out of the fund to which the employer is compelled to contribute." Zabler v. Dept. of Labor and Industries, 123 Wash. 410, 217 Pac. 33.

The controlling question therefore is, is the work in which these workmen are engaged within the legislative jurisdiction of the state. The question is one we have not found easy of solution. Nor is it one upon which we can pronounce a determinative judgment. It involves the law maritime, over which the highest federal court has plenary and final jurisdiction, and it is to the decisions of that court that we must look for the governing rules. The decisions, we shall not analyze. Generally, it can be said that it is the settled doctrine of that court that any work

[fol. 27] performed by workmen upon navigable waters, no matter what may be its character, is essentially maritime in its nature, and controlled by the principles of admiralty. A further settled rule is that in contract matters admiralty jurisdiction depends upon the nature of the transaction, and in tort matters upon locality.

Southern Pacific Co. v. Jensen, 244 U. S. 205;
Clyde Steamship Co. v. Walker, 244 U. S. 255;
Chelentis v. Luckenbach Steamship Co., 247 U. S. 372;
Knickerbocker Ice Co. v. Stewart, 253 U. S. 149;
Western Fuel Co. v. Garcia, 257 U. S. 233;
Gonsalves v. Morse Dry Dock Co. 266 U. S. 171.

The general rules here announced would seem to control the question against the contention that the work of the workmen here involved is within the legislative jurisdiction of the state, but the court cited has announced an exception to these general rules which materially affects their application. It has held that where the employment, although maritime in its character, pertains to local matters, having no direct relation to navigation and commerce, the maritime law "might be modified or supplemented" by state statutes since the regulation would "work no material prejudice to any characteristic feature of the general maritime law, or interfere with the harmony or uniformity of that law in its international or interstate relations." In Western Fuel Co. v. Garcia, 257 U. S. 233, the exception was applied to a state death statute. In that case it appeared that a citizen and resident of California was instantly killed while employed in the hold of a Norwegian vessel. An admiralty suit in personam was instituted against his employer for damages, in which it was charged that the death was the result of the negligence of the employer. There was a state statute giving a right of action [fol. 28] for death by wrongful act, and because of this statute a recovery was allowed in the United States district court in which the action was instituted. The cause was appealed to the Circuit Court of Appeals, from which court it was sent to the Supreme Court by the direction of the latter court. The case was reversed because the district court refused to hold that the suit was barred by the

statute of limitations, but concerning the right to maintain the suit, this language was used:

"It is established doctrine that no suit to recover damages for the death of a human being caused by negligence, may be maintained in the admiralty courts of the United States under the general maritime law. At the common law no civil action lies for an injury resulting from death. The maritime law as generally accepted by maritime nations leaves the matter untouched and in practice each of them has applied the same rule for the sea which it maintains on land. The Harrisburg, 119 U. S. 204, 213; The Alaska, 130 U. S. 201, 209; La Bourgogne, 210 U. S. 95, 138, 139.

"How far this rule of non-liability adopted and enforced by our admiralty courts in the absence of an applicable statute may be modified, changed or supplemented by state legislation has been the subject of consideration here but no complete solution of the question has been announced.

"As the logical result of prior decisions we think it follows that, where death upon such waters results from a maritime tort committed on navigable waters within a State whose statutes give a right of action on account of death by wrongful act, the admiralty courts will entertain a libel in personam for the damages sustained by those to whom such right is given. The subject is maritime and local in character and the specified modification of or supplement to the rule applied in admiralty courts, when following the common law, will not work material prejudice to the characteristic features of the general maritime law, nor interfere with the proper harmony and uniformity of the law in its international and interstate relations. Southern Pacific Co. v. Jensen, 244 U. S. 205."

In Grant Smith Porter Co. v. Rohde, 257 U. S. 469, the principle was applied to a workman on an incompleted vessel, after the vessel had been launched and was in navigable waters. The workman was injured because of the negligence of his employer, and instituted a libel in personam against his employer for damages. The injury occurred in the state of Oregon, which state had a workmen's compensation law applicable to hazardous occupations, with which the employer had complied by

[fol. 29]

paying into the accident fund created by the law the specified payments which included deductions made from the wages of the workmen. Two questions were submitted to the supreme court, first, whether the admiralty jurisdiction extended to a proceeding to recover damages resulting from a tort committed on a vessel in process of construction when lying within the navigable waters within a state, and, second, "whether under the circumstances stated the exclusive features of the Oregon workmen's compensation act would apply and abrogate the right to recover damages in an admiralty court which otherwise would exist." The court answered both questions affirmatively. Stating with reference to the latter, that: "Here the parties contracted with reference to the state statute; their rights and liabilities had no direct relation to navigation, and the application of the local law cannot materially affect any rules of the sea whose uniformity is essential." It might be thought that because the parties had contracted with reference to the state statute it had a controlling influence in the mind of the court, but the court, in subsequent decisions, re-stated the ground of its conclusion, resting it upon the sole ground that the application of the state law would work no material prejudice to the characteristic features of the general maritime law. See, Gt. Lakes Co. v. Kierejewski, 261 U. S. 479; Millers' Indemnity Underwriters v. Brand, — U. S. —, 68 Advance Opinions 211. The latter case is instructive also on the question now under consideration. In that case the workman was, while employed as a diver, submerged from a floating barge, anchored in a navigable stream some thirty-five feet from the bank of the stream, for the purpose of sawing off timbers from an abandoned set of ways which had become an obstruction [fol. 30] to navigation. While thus submerged the air supply failed and he died of suffocation. The courts of Texas affirmed an award made under the workmen's compensation law of that state, and the case was taken to the Supreme Court of the United States on writ of error where the judgment of the Texas court was affirmed. In its decision, the Supreme Court, after pointing out that matters which are not of mere local concern because of their relation to commerce and navigation, are beyond the regulatory powers of the state, again affirmed the rule that as to

local matters which will work no material prejudice to the general maritime law, the rules of the latter may be modified or supplemented by state statutes. In the course of the opinion this language was used:

"In the cause now under consideration the record discloses facts sufficient to show a maritime tort to which the general admiralty jurisdiction would extend save for the provisions of the state Compensation Act; but the matter is of mere local concern and its regulation by the state will work no material prejudice to any characteristic feature of the general maritime law. The act prescribes the only remedy; its exclusive features abrogate the right to resort to the admiralty court which otherwise would exist."

The workmen's compensation acts the court had under consideration in these cases are no more exclusive than our own. Indeed, if there be a difference in this respect, ours is the more exclusive. Not only is it compulsory rather than elective, but by express declaration it withdraws from private controversy and from the jurisdiction of the courts all controversies arising over the right to compensation for personal injuries received by a workman in an extra hazardous occupation. Its exclusive features are further exemplified by the fact that it expressly declares that it is intended to apply "to all such inherently hazardous works and occupations, and it is the purpose to embrace all of them, which are within the legislative jurisdiction of the [fol. 31] state" (Rem. Comp. Stat. 7674).

Measured by the test the authoritative court has laid down, it is our opinion that the workmen here under consideration are within the terms of the workmen's compensation act, and that their employers are liable to contribute to the accident fund as required by the act. Manifestly, it seems to us, that the work in which the workmen are engaged is purely local in its nature, that it has no direct relation to commerce or navigation, and that its regulation by the state will work no material prejudice to any characteristic feature of the general maritime law, nor interfere with the harmony or uniformity of that law in its international or interstate relations. These being the circumstances, in the language of the last of the cited cases, "The act prescribes the only remedy; its exclusive features abrogate

the right to resort to the admiralty court which otherwise would exist." And from this it follows that, since the workmen injured in the work may resort to the fund for compensation for their injuries, their employers are obligated to contribute to the fund.

The judgments of the lower court are affirmed.

Fullerton, J.

We concur: Tolman, C. J., Holcomb, J., Main, J., Mitchell, J.

[Vol. 32] In Supreme Court of Washington

[Title omitted]

Judgment—January 4, 1927

This cause having been heretofore submitted to the Court, upon the transcript of the record of the Superior Court of Thurston County, and upon the argument of counsel, and the court having fully considered the same, and being fully advised in the premises, it is now, on this 4th day of January, A. D. 1927, on motion of John H. Dunbar and M. H. Wright, of counsel for respondents, considered, adjudged and decreed, that the judgment of the said Superior Court be, and the same is, hereby affirmed with costs; and that the said Department of Labor & Industries of Wash. have and recover of and from the said Sultan Railway & Timber Co. and from United States Fidelity & Guaranty Co. surety the costs of this action taxed and allowed at Thirty two & 50/100 Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

[fol. 33] [File endorsement omitted]

IN SUPREME COURT OF WASHINGTON

WRIT OF ERROR Filed April 2, 1927

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Justices of the Supreme Court of the State of Washington, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the Supreme Court of the State of Washington before you, at the October term, 1926, thereof, being the highest court of law or equity of said state in which a decision could be had in said suit between the plaintiff in error, Sultan Railway & Timber Company, designated as the plaintiff and appellant, and Department of Labor and Industries of the State of Washington, and Claire Bowman, as Director of Labor and Industries, designated as defendants and respondents, wherein rights are claimed under the Constitution of the United States and the acts of the Congress of the United States, and the decision was against the rights especially set up and claimed under said Constitution and the acts of the Congress of the United States, a manifest error happened to the great damage of the said Sultan Railway & Timber Company, as by its complaint appears.

We, being willing that error, if any hath been, shall be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that you under your seal, distinctly and openly, do send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the [fols. 34-36] same in the said Supreme Court at Washington, within sixty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what is right, and according to the laws and customs of the United States should be done.

Witness the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States, this 2d day of

April, in the year of our Lord, one thousand nine hundred twenty-seven.

Done in the City of Seattle, and County of King, with the seal of the District Court of the United States for the Western District of Washington attached.

Ed. M. Lakin, Clerk of the District Court of the United States for the Western District of Washington, by T. W. Egger, Deputy Clerk U. S. District Court, Western District of Washington. (Seal of the United States District Court.)

Allowed by Kenneth Mackintosh, Chief Justice of the Supreme Court of the State of Washington.

[fol. 37] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED — Filed June 15, 1927

To the Department of Labor & Industries of the State of Washington and Claire Bowman, as Director of Labor & Industries of the State of Washington, and John H. Dunbar, Attorney General of the State of Washington, and Mark H. Wight, Assistant Attorney General of the State of Washington, attorneys for defendants in error:

You will please take notice that the Plaintiff in Error hereby designates as the points to be relied upon, upon writ of error, the following:

I

The court erred in holding and adjudging that the rule, promulgated by the Department of Labor & Industries of the State of Washington, and Claire Bowman, as Director of Labor & Industries of the State of Washington, assuming to act pursuant to and in conformity with an act of the State of Washington, entitled:

"An Act relating to the compensation of injured workmen in our industries, and the compensation to their dependents where such injuries result in death, creating an Industrial

Insurance Department, making an appropriation for its administration, providing for the creation and disbursement of funds for the compensation and care of workmen injured in hazardous employment, providing penalties for the non-observance of regulations for the prevention of such injuries and for violation of its provisions, asserting and exercising the police power in such cases, and, except in certain specified cases, abolishing the doctrine of negligence as a ground for recovery of damages against employers, and depriving the courts of jurisdiction of such controversies, and repealing sections 6304, 6305 and 6306 of Remington & Ballinger's Annotated Codes and Statutes of Washington, relating to employees in factories, mills or workshops where machinery is used, actions for the recovery of damages and proscribing a punishment for violation thereof."

approved March 14, 1911 (commonly known as the "Workmen's Compensation Act"), requiring employers of workmen wholly engaged in making up and working upon rafts [fol. 58] of logs, while upon the navigable waters of the United States, preparatory for tow upon the navigable waters of the United States, said rafts of logs being made up and held together by logs, commonly known as boom sticks, permanently chained together, end to end, and permanently used for so holding together and towing said rafts of logs, upon which rafts and boom sticks such workmen are compelled to walk and stand while engaged in their duties, to include in the pay rolls which employers engaged in extra hazardous industry, as defined in said Workmen's compensation Act, are required by the terms of said act, to report to said Department and Director, and to pay assessments, levied by said Department and Director, upon such pay rolls for the purpose of maintaining the Accident Fund, created by said act for the purpose of compensating workmen engaged in extra-hazardous industry, and their dependents, for injuries sustained by such workmen while so engaged, is not in violation of Article III, Section 2, of The Constitution of the United States, extending the judicial power of the United States to all cases of admiralty and maritime jurisdiction.

II

The court erred in holding and adjudging that said rule is not in violation of Article I, Section 8, of the Constitution of the United States, giving Congress power to make all the laws necessary and proper to carry into execution the powers vested in the Government of the United States.

III

The court erred in holding and adjuding that said rule is not in violation of and contrary to Sections 24, and 256, of the Judicial Code of the United States, giving the Federal District Court the exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction.

D. V. Halverstadt, J. M. J. O'Brien, Attorneys for Plaintiff in Error. Frederic E. Fuller, of Counsel.

[fol. 39] Service and receipt of copy hereof admitted this 10th day of June, 1927.

John H. Dunbar, Attorney General; Mark H. Wight, Assistant Attorney General, Attorneys for Defendants in Error.

[fols. 40 & 41] In Supreme Court of the United States

Designation

To Clerk of the Supreme Court of the United States and the Department of Labor & Industries of the State of Washington and Claire Bowman as Director of Labor & Industries of the State of Washington, and to John H. Dunbar, Attorney General of the State of Washington, and Mark H. Wight, Assistant Attorney General of the State of Washington, attorneys for defendants in error:

You will please take notice that the Plaintiff in Error in the above entitled action hereby designates the following parts of the record to be printed.

1. Amended complaint;
2. Demurrer to amended complaint;

3. Order sustaining demurrer to amended complaint and judgment of dismissal;

4. Order and judgment of Supreme Court of the State of Washington sustaining and affirming order and judgment of dismissal.

D. V. Halverstadt, J. M. J. O'Brien, Attorneys for Plaintiff in Error. Frederic E. Fuller, of Counsel.

Due service of the foregoing Designation and receipt of copy hereby admitted this 8th day of June, 1927.

John H. Dunbar, Atty. Gen'l; Mark H. Wight, Asst. Atty. Gen'l, Attorneys for Defendants in Error.

Endorsed on cover: File No. 32,726. Washington Supreme Court. Term No. 274. Sultan Railway & Timber Company, plaintiff in error, vs. Department of Labor and Industries of the State of Washington and Claire Bowman, as Director of Labor and Industries. Filed May 31, 1927. File No. 32,726.